IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

Crl.MC.No. 2000 of 2006()

CC.570/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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PETITIONER: ACCUSED

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1. ABRAHAM,
   NAGANADIYIL, KALLADU AMSOM,
   CHETTUTTY P.O., KOSAVANVAYAL.

2. RETHISH @ KUTTAN, AGED 19 YEARS,
   S/O. ABRAHAM, NAGANADIYIL,
   MANNERRY.

3. REGISH S/O. ABRAHAM, AGED 20 YEARS,
   NAGANADIYIL CHETTUVATTY DESOM,
   IRRIKKUR.

BY ADV. SRI.K.C.PETER

RESPONDENTS: COMPLAINANT AND STATE

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1. E.T.CHANDRAN,
   EDAMNAKUNNEL, S/O. THANKAPPAN,
   MANNERY KALLADU AMSOM, CHETTUTTY P.O.,
   KESAVANVAYAL, IRRIKKUR.

2. SUB INSPECTOR OF POLICE,
   IRRIKKUR, REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

BY ADV. SRI.ANTONY JOSEPH.K.
PUBLIC PROSECUTOR SRI.GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 2000 OF 2006

Dated this the 4th day of December, 2006

ORDER

About an incident which took place on 15/6/2004, the rival contestants initiated steps for prosecution. On the complaint filed by the 1st petitioner, the police filed a charge sheet. Cognizance was taken by the learned Magistrate. The said case ended in acquittal as per judgment dated 27/4/2006. Against the said judgment of acquittal, a revision was filed and the same is pending before this Court as Crl.R.P. No.3190/06, it is submitted.

2. The 1st respondent herein, who was the sole accused in that case charged by the police, filed a private complaint on 16/9/04. Cognizance was taken on that complaint and summons has been issued to the petitioners raising allegations, inter alia, under Secs.324 and 506(1) read with Sec.34 of the IPC. They pray that the private complaint initiated against them by the 1st respondent may be quashed by invoking the powers under Sec.482 of the Cr.P.C.

3. What are the grounds? The learned counsel for the

petitioners submits that a case and a counter case deserve to be tried together. In this case that is not possible now because the main case (according to the petitioner) has already been disposed of. Inasmuch as trial of the case and counter case together/simultaneously is not possible, the prosecution initiated against the petitioners is liable to be quashed, it is submitted.

4. From principles, statutory provisions or precedents I am unable to accept this contention. Of course, the courts have repeatedly held that the salutary principle of the case and the counter case being tried by the same court has to be observed. But occasions may arise where compliance with that becomes impossible for various reasons. Here is a case where such simultaneous disposal of the case and the counter case has become impossible because of the conduct of the parties who did not bring it to the notice of the court that a counter case is pending when the main case was disposed of. That error or irregularity committed by the court cannot certainly confer on the petitioners any undeserved advantage. The prosecution initiated against the petitioners cannot certainly be quashed for that reason. The challenge raised must, in these circumstances, fail.

5. The learned counsel for the petitioners submits that the petitioners may be given an opportunity to claim discharge. No permission of this Court is required. If circumstances justify such discharge, discharge can be claimed under Sec.245(2) of the Cr.P.C. In the alternative, after completing the enquiry under Sec.245 of the Cr.P.C., discharge under Sec.245(1) of the Cr.P.C. can also be claimed. I need only mention that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioners to claim discharge or acquittal at the appropriate stage.

6. With the above observations, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge